

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**BROOKLYN BOTTLING OF MILTON,
NEW YORK, INC.**

Plaintiff,

-v.-

ECUABEVERAGE CORPORATION,

Defendant,

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Civil Action No.

07-CV-08483-AKH

**ORAL HEARING
REQUESTED**

**DEFENDANT ECUABEVERAGE CORPORATION'S
NOTICE OF MOTION FOR SANCTIONS, PURSUANT TO FED.R.CIV.P. 11**

PLEASE TAKE NOTICE that Defendant Ecuabeverage Corporation ("Ecuabeverage"), pursuant to Fed.R.Civ.P. 11, will move for an *Order* sanctioning Plaintiff Brooklyn Bottling of Milton, New York, Inc. ("Brooklyn Bottling") and its counsel for their failure to conduct a reasonable and proper pre-filing investigation prior to the filing of: (a) Counts I and II of Brooklyn Bottling's *Complaint* (Docket Entry # 1) on October 1, 2007, which stated claims for federal trademark infringement, pursuant to 15 U.S.C. §1114, against Ecuabeverage for allegedly infringing the trademark "TROPICAL PURO SABOR NACIONAL" of U.S. Trademark Reg. No. 1,474,395; and (b) Counts I and II of Brooklyn Bottling's *Amended Complaint* (Docket Entry # 22), filed February 29, 2008 (entered March 25, 2008), stating claims for federal trademark infringement, pursuant to 15 U.S.C. §1114, against Ecuabeverage for allegedly infringing the trademark "TROPICAL PURO SABOR NACIONAL" of U.S. Trademark Reg. No. 1,474,395, and Count

VI, which states a claim for “prohibited importation,” pursuant to 19 U.S.C. §1526, against Ecuabeverage for allegedly importing beverage goods into the United States that carried labels or other markings that infringed the trademark “TROPICAL PURO SABOR NACIONAL” of U.S. Trademark Reg. No. 1,474,395, said enumerated allegations of Brooklyn Bottling’s *Complaint* and *Amended Complaint* lacking evidentiary support with the lack of evidentiary support having been conceded by Brooklyn Bottling in *Plaintiff’s Statement of Material Facts in Opposition to Defendant’s Motion for Partial Summary Judgment on Counts I, II and VI*, (at ¶ 10), filed April 11, 2008 (Docket Entry # 29 – Attachment # 1).

Defendant Ecuabeverage Corporation’s Motion for Sanctions, Pursuant to Fed.R.Civ.P. 11 and other papers and all attachments (except for this *Notice of Motion*) were first served upon counsel for Brooklyn Bottling more than 21 days prior to the filing of this motion with the Court under cover of the accompanying e-mail transmitted April 15, 2008 (*Notice of Motion – Exhibit 1*), as required by Fed.R.Civ.P. 11. Ecuabeverage’s *Motion for Sanctions, Pursuant to Fed.R.Civ.P. 11* is now being filed with the Court in light of Brooklyn Bottling’s maintenance of the pendency of Counts I, II and VI of its *Amended Complaint* (Docket Entry # 22.)

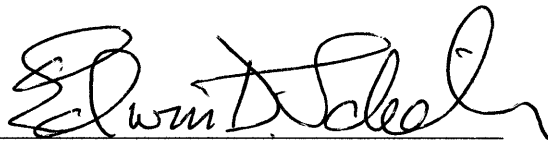
This motion is based on this *Notice of Motion for Sanctions, Pursuant to Fed.R.-Civ.P. 11*, and the exhibit attached thereto, *Defendant Ecuabeverage Corporation’s Motion for Sanctions, Pursuant to Fed.R.Civ.P. 11, Defendant Ecuabeverage Corporation’s Memorandum in Support of its Motion for Sanctions, Pursuant to Federal Rule of*

Civil Procedure 11, Affirmation of Edwin D. Schindler in Support of Defendant Ecuabeverage's Motion for Sanctions, Pursuant to Fed.R.Civ.P. 11, and the exhibit attached thereto, the pleadings and papers on file herein, and upon such other matters as may be presented to the Court at the time of hearing.

Respectfully submitted,

ECUABEVERAGE CORPORATION

Dated: May 7, 2008

By 

Edwin D. Schindler (ES-7882)

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CERTIFICATE OF SERVICE

I, EDWIN D. SCHINDLER, attorney for Defendant Ecuabeverage Corporation., hereby certify that I served a complete copy of *Defendant Ecuabeverage Corporation's Notice of Motion for Sanction, Pursuant to Fed.R.Civ.P. 11*, upon the following counsel for Plaintiff Brooklyn Bottling of Milton, New York, Inc., via First-Class Mail, postage pre-paid:

Jeffrey E. Jacobson
Bruce E. Colfin
JACOBSON & COLFIN, P.C.
60 Madison Avenue, Suite 1026
New York, New York 10010

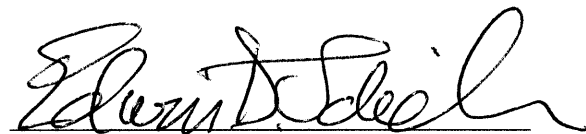
and

via E-Mail at:

jeffrey@thefirm.com

bruce@thefirm.com

on May 7, 2008.


Edwin D. Schindler (ES-7882)
Attorney for Defendant